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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,043	05/23/2001	Saadat H. Khan	0012-1	2402
25901	7590	08/27/2010		
ERNEST D. BUFF ERNEST D. BUFF AND ASSOCIATES, LLC. 231 SOMERVILLE ROAD BEDMINSTER, NJ 07921			EXAMINER BORLINGHAUS, JASON M	
			ART UNIT 3693	PAPER NUMBER
			MAIL DATE 08/27/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/864,043

Applicant(s)

KHAN, SAADAT H.

Examiner

JASON M. BORLINGHAUS

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 459, 464, 465, 468, 469 and 471-473 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 47, 459, 464, 465, 468, 469 and 471 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/29/2010 has been entered.

Claim Objections

Claim 272 is objected to because of the following informalities: lack of antecedent basis. Claim 272 references "said registration agreement" but that is the first mention of said claim element. Appropriate correction is required.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 459 is rejected under 35 U.S.C. 103(a) as obvious over Conklin (US Patent 6,141,653) in view of Miller (Miller, Michael. *The Complete Idiot's Guide to Online Auctions*. Que. 1999. pp. 1 – 331) and Malnekoff (US PG. Pub. 2001/0024532).

Regarding Claim 459, Conklin discloses a system for processing the sale and purchase of items, comprising:

- a. a storage device (storage space). (see Claim 1);
- b. a processor (automated negotiations engine/desktop computer) connected to the storage device; and the storage device storing a program (software) for controlling the processor (see col. 17, lines 23-34; Claim 1); and the processor operative with the program to:
 - i. receive sell offers from a seller and bargain offers from a buyer (buyer orders and counteroffers), including conditions for purchase (all desired terms) and a payment identifier (payment options), thereby defining said bargain offer. (see abstract) ;
 - ii. carry out a bargaining (iterative bargaining) process with said buyer to arrive at a price for at least one of said items that is agreed on by said buyer and said seller. (see abstract);
 - iii. arrange for the purchase (payment) of said at least one item by said buyer from said seller at said price. (see col. 14, lines 63-65).
- c. said processor is further operative with the program to start the bargain process by generating bargain prices for said buyer and said seller continuously until a point is reached where (1) an acceptable price is arrived at or said buyer (closure) or (2) said seller stop bargaining. (see col. 25, lines 12-20);

- d. said processor is further operative with the program to validate a received bargain offer signal from said buyer or sell offer signal from seller and thereby determine whether said received offer signal meets predetermined validation criteria (participant identity validation) . (see col. 30, lines 52-54);
- f. said processor is further operative with the program to notify the buyer or seller concerning the status of shipment in transit, said notification being provided (a) at the time of sale. (see fig. 8, 29);
- g. indicating to the buyer that a bargain price (counteroffer) generated by said system, upon being accepted by said seller, will remain active, subject to acceptance by said buyer. (see col. 25, lines 12-20);
- h. said processor is further operative with the program to verify the legitimacy, authenticity, and condition of said product (samples) (see col. 8, line 18 – col. 9, line 32; 31, line 28 – col. 32, line 23), said verification comprising the steps of:
 - i. obtaining issuance of an authenticity certificate (independent assessment) from an authorized appraiser (inspection service). (see col. 8, line 18 – col. 9, line 32; col. 31, line 28—col. 32, line 23);
 - iv. checking (evaluating) condition of said product (samples) at the time of pickup or delivery. (see col. 8, line 18 – col. 9, line 32; col. 31, line 28—col. 32, line 23).

Walker does not teach a system wherein a notification is transmitted to the buyer indicating that the buyer's bargain offer is less than certain minimum predetermined offer criteria and asks said buyer to send another bargain offer, or quit the bargaining process, or to follow a bargaining recommendation provided by an online shopping assistant; indicating to the buyer notify the buyer or seller concerning the status of shipment in transit, said notification being

provided (a) at the time or sale; and (b) periodically in response to a buyer or seller request after purchase of said product; or indicating that bargain prices, will remain active, during a predetermined time period, provided that the product or service appointed for purchase remains available.

Miller discloses a system wherein said processor is further operative to:

- d. validate a received bargain offer signal from said buyer (bid) and thereby determine whether said received offer signal meets predetermined validation criteria (participant identity reserve price) . (see p. 29);
- e. transmit a notification to the buyer indicating that the buyer's bargain offer is less than certain minimum predetermined offer criteria (reserve price) and asks said buyer to send another bargain offer. (see p. 29);
- f. notify the buyer or seller concerning the status of shipment in transit, said notification being provided (a) at the time or sale; and (b) periodically in response to a buyer or seller request after purchase of said product. (see pp. 41 – 42; 275 – 282); and
- g. indicating to the buyer that a bargain price, will remain active, during a predetermined time period, provided that the product or service appointed for purchase remains available. (see pp. 25-31).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Colkin by incorporating a system by which to transmit such notifications and indications concerning a negotiating and shipping process, as disclosed by Miller, allowing the purchaser to remain informed about the status of the negotiating and shipping process.

Conklin does not explicitly teach a system wherein the processor verifies the pricing of products listed by the seller, said verification comprising (ii) obtaining a price evaluation from

said authorized appraiser; and (iii) checking product certification at the time of pick-up or delivery.

Malnekoff discloses a system wherein a processor is further operative with the program to verify the legitimacy, authenticity, and condition of said product (gemstone) and the pricing (pricing estimate) of products (gemstones) listed by the seller (see abstract), said verification comprising the steps of:

- i. obtaining issuance of an authenticity certificate (laboratory certificate) from an authorized appraiser. (see para. 33);
- ii. obtaining a price evaluation (price estimate) from said authorized appraiser. (see para. 34);
- iii. checking product certification (laboratory certificate). (see para. 33-34); and
- iv. checking condition of said product. (see para. 33-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Colkin and Miller by incorporating a system by which to assess whether an item was as claimed, as disclosed by Malnekoff, thereby ensuring that the received item conformed to the product purchased via the negotiating process.

Claims 464 – 465 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin, Miller and Malnekoff, as in Claim 459 above, and in further view of Walker (US Patent 5,794,207).

Regarding Claims 464 – 465, Conklin discloses a system wherein the system collects fees. (see abstract).

Conklin does not disclose a system further comprising permitting a buyer to request free chances or buy more chances at a predetermined chance purchase price; nor permitting a

buyer to use one or more bargain chances provided by the system to continue bargaining until all chances have been used, said buyer having an election to purchase additional chances for a predetermined purchase price;

Walker discloses a system wherein said processor is further operative with the program to:

- permit buyer to request free chances (CPO opportunities) or buy more chances (CPO opportunities) at a predetermined chance purchase price (flat fee). (see col. 20, lines 16 – 39); and
- permit buyer to use one or more bargain chances (CPO opportunities) provided by the system to continue bargaining until all chances (CPO opportunities) have been used, said buyer having an election to purchase additional chances (CPO opportunities) for a predetermined purchase price (fee). (see col. 20, lines 16 – 39).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Conklin, Miller and Malnekoff by incorporating a fee structure in which a buyer pays per chance, as disclosed by Walker, thereby forcing buyers to become more efficient in their chance usage due to the per-chance assessed fee.

Claims 468-469 and 471-472 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin, Miller and Malnekoff, as in Claim 459 above, and in further view of Meyer (US Patent 6,915,271).

Regarding Claim 468-469 and 471-472, Conklin does not teach a system further comprising awarding discounts or special promotions randomly or to privileged customers, said buyers being notified of such discount or special promotion awards by surprise pop-up

messages; enabling the buyer to use the wild card discounts or special promotions to enhance bargaining opportunities, by obtaining a certain percentage reduction of a final bargain offer; awarding purchase incentives selected from a group consisting of (a) bonus chances made available upon the purchase of products or services and (b) purchase points provided upon purchase products; tracking buyer's accumulation of a predetermined number of purchase points, and notify buyer that said accumulated purchase points are applicable to provide additional discounts, offers or enhanced bargaining opportunities, in accordance with said registration agreement; and providing at least one pop-up surprise message during bargaining, said surprise message according an additional discount on the product, or a promotional offer, with respect to said product.

Meyer discloses a system wherein said processor is further operative with the program to:

- award discounts or special promotions (incentives) randomly or to privileged customers, said buyers being notified of such discount or special promotion awards by surprise pop-up messages (pop-up window). (see col. 17, line 60 – col. 18, line 18);
- enable the buyer to use the wild card discounts or special promotions to enhance bargaining opportunities, by obtaining a certain percentage reduction of a final bargain offer. (see col. 25, lines 50-57);
- award purchase incentives (coupons) selected from a group consisting of (a) bonus chances made available upon the purchase of products or services and (b) purchase points provided upon purchase products (purchase of multiple triggering items). (see col. 5, lines 32-47);

- track buyer's accumulation of a predetermined number of purchase points, and notify buyer that said accumulated purchase points are applicable to provide additional discounts, offers or enhanced bargaining opportunities, in accordance with said registration agreement. (see col. 3, lines 1-14); and
- providing at least one pop-up surprise message during bargaining, said surprise message according an additional discount on the product, or a promotional offer, with respect to said product. (see fig. 19).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Colkin, Miller and Malnekoff by incorporating traditional advertising and promotional methodologies, as disclosed by Meyer, to entice customers to engage to further purchases.

Response to Arguments

Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON M. BORLINGHAUS whose telephone number is (571)272-6924. The examiner can normally be reached on Monday - Friday; 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James A. Kramer can be reached on (571)272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason M Borlinghaus/
Primary Examiner, Art Unit 3693
August 25, 2010